IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 577 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

ASHWINBHAI U SHAH

Appearance:

MR MA BUKHARI, APP for Petitioner

PARTY-IN-PERSON for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/10/2000

ORAL JUDGEMENT

1. This revision is directed against the order dated August 19, 1998 of the Additional Sessions Judge, Baroda under which, he has refused to record portion of the statement of the complainant Dr.Vasant Patel, which was objected by the accused/respondent as hearsay.

2. Shri MA Bukhari, learned APP representing the State/revisionist and the respondent in person have been heard.

3. A preliminary objection has been raised by the respondent that the impugned order is interlocutory order hence, no revision is maintainable. It may be mentioned that the revision was admitted straightaway on March 11, 1999 and, at that time, the respondent had no opportunity of raising this plea. Normally, once the revision is admitted, such technical plea is not permitted to be raised, provided the other side had opportunity to raise this plea. In the instant revision, the respondent had no opportunity at the time of admission of revision to take this preliminary objection. Consequently, he is permitted to raise the preliminary objection.

4. From the impugned order, it is clear that the rights and obligations of the parties have not been decided through it, nor it is an order which has prevented the prosecution from examining the complainant Dr.Vasant Patel. On the other hand, the objection of the respondent was that, this witness can not be permitted to depose what another witness of the prosecution Tejas Patel has stated to him, unless Tejas Patel is examined by the prosecution as a witness. The objection was thus, interim objection in the sense that the respondent wanted to impress upon the court below that the perception of the prosecution witness Tejas Patel that, in some circumstances he was awarded less mark, can not be permitted to be deposed by the complainant Dr.Vasant Patel. Such perception can be permitted to be deposed by Tejas Patel when he is examined as a prosecution witness.

5. Shri Bukhari has pointed out that since Tejas Patel is in America, his presence in the country in the near future is not possible. However, it is not a case where the prosecution does not intend to examine Tejas Patel. The delay in procuring attendance of Tejas could not be the ground for interference in the impugned order, which is purely interlocutory order. It was not the objection of the respondent that the complainant Dr.Vasant Patel should not at all he examined as a witness; rather he was permitted to be examined as a prosecution witness and to state in the line of allegations made in the complaint except on the point which relates to perception of another witness Tejas Patel. In this way, if such objection was taken and it was made specific in the objection that the complainant Dr.Vasant Patel can not be permitted to state what Tejas

Patel has stated to him, unless Tejas is examined as a witness, it is nothing but an interim objection and, if this interim objection of the respondent was sustained, it can be said to be the order in the nature of interlocutory order. Neither, the respondent nor, the court below has, for all times to come, ruled that the objected portion of the statement of Dr.Vasant Patel can not be recorded. Instances are not rare where, certain statements are given by a prosecution witness, which is not admissible and is hearsay. If, objection on this point is decided while the witness was in the witness box, it is nothing but interlocutory order. The ultimate effect of such order can be seen in appeal and not in revision.

6. Consequently, the impugned order is nothing but, interlocutory order, against which no revision lies. If the order is not revisable then, the merits of the order need not be investigated. The revision is accordingly dismissed as not maintainable.

October 10, 2000. (D.C. Srivastava, J.)

/sakkaf